IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4831 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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NAVAGHAN JETHA KARAVADRA

Versus

SUPERINTENDING ENGINEER

Appearance:

1. Special Civil Application No. 4831 of 1997

MR PV HATHI for Petitioner No. 1

MR DESAI, AGP, for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 07/08/2002

ORAL JUDGEMENT

1. The petitioner was working as a driver with respondent-department in the Sonmati Irrigation Scheme. According to him, he worked as such from 1982 to 1989, whereafter his services came to be terminated because the vehicle was transferred to another division, where another driver was to drive the vehicle. An industrial dispute was raised and a reference was made under Section 10 of the Industrial Disputes Act, 1947 to the Labour Court by the Assistant Labour Commissioner. Ultimately, the matter was registered as Reference (LCJ) No.1936 of

1990 before the Labour Court, at Jamnagar. After considering the rival side cases, the Labour Court came to a conclusion that there is no retrenchment of the petitioner as his services came to an end due to closure of the project. The Labour Court, however, observed that because the petitioner had worked from 1982 to 1989, he ought to have been paid retrenchment allowance, as contemplated under Section 25F of the Industrial Disputes Act.

2. Learned Advocate Mr.. Hathi has taken this Court through the award. He has assailed the award on the ground that it is passed on an erroneous interpretation of law and evidence and has prayed for allowing this petition ordering reinstatement of the petitioner with full back wages.

3. The petition is opposed to by learned Assistant Government Pleader Mr. Desai. He has submitted that a specific contention was taken before the Labour Court that the respondent is not an industry as contemplated under the Industrial Disputes Act. In support of his contention, he has placed reliance on a decision of Division Bench of this Court in the case of Shankerji Chelaji Thakore v. State of Gujarat, 2000(1) GLH 482, wherein the Court has specifically observed that Irrigation Department cannot be said to be an industry within the meaning of the definition under the Industrial Disputes Act. Mr. Desai then submitted that, as observed by the Labour Court in the award, admittedly, the petitioner was a daily wager and there is no question of applying provisions of Section 25F of the Industrial Disputes Act to a daily wager. He has relied on the decision of the Apex Court in the case Himanshu Kumar Vidhyarti v. State of Bihar, AIR 1997 SC 3657. Mr. Desai also submitted that what is sought by the petitioner is regularisation in service by reinstatement, which is also not permissible, as held by the Apex Court in State of U.P. & Ors. v. Ajay Kumar (1997) 4 SCC 88.

4. This Court has gone through the award of the Labour Court as well as copy of the deposition of the petitioner furnished by learned Advocate Mr. Hathi.

5. What transpires from the deposition of the petitioner is that he was engaged for the work of Sonmati Dam. He has also admitted that the dam work is over. It is also a fact admitted by him that, at the time when he was taken on service, he was specifically informed that when the work would be over, he would be removed from service. It is also admitted by him that he was being

paid only for the days for which he had worked.

6. The Labour Court, in the award, has also taken note of these aspects and has further observed that the services of the petitioner came to an end on completion of the dam work and, therefore, it is not retrenchment. The Labour Court also observed that the petitioner had approached the Civil Court and had obtained an order that he be continued in service as long as there is work at the dam site and because the work at the dam site was over, his services have automatically come to an end and there is no retrenchment.

7. With the above factual observations and factual aspects of the present case, if the law as settled by the Apex Court in the case of Himanshu Kumar Vidhyarti v. State of Bihar (supra) is seen, which specifically provides that in case of daily wagers, their termination cannot be construed to be retrenchment and cannot be considered as arbitrary, as they were not entitled to the post. The petitioner, therefore, cannot seek the relief of being taken back in the service nor can he insist for compliance of Section 25F of the Industrial Disputes Act.

8. Likewise, as observed in the case of Shankerji Chelaji Thakore v. State of Gujarat (supra), Irrigation Department cannot be said to be an industry within the meaning of the definition under the Industrial Disputes Act and, therefore, Industrial Disputes Act cannot be applied to the Department or its employees. In this regard, cases between Executive Engineer (State of Karnataka) v. K. Somasetty, 1997 AIR SC Weekly 2627, Union of India v. Jai Narayan Singh, 1995 Supp. (4) SCC 672 and State of H.P. v. Suresh Kumar Verma (1996) 2 JT SC 455 can also be profitably referred to.

9. In view of the fact situation and the established legal proposition, the petition cannot be entertained. It must fail and the same is, therefore, dismissed. Rule is discharge with no orders as to costs.

[A. L. DAVE, J.]
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